

August 17, 2017

VIA EMAIL [SenecaMeadowsHearing@dec.ny.gov] & USPS OVERNIGHT DELIVERY

Kimberly Merchant
New York State Department of Environmental Conservation
Region 8 Headquarters
6274 East Avon-Lima Road
Avon, New York 14414

Re: Seneca Meadows, Inc., ECL Article 27: Solid Waste Management, #8-4532-00023/00001

Dear Ms. Merchant:

This office represents Concerned Citizens of Seneca County, Inc. ("CCSC"), a not-for-profit grass-roots citizens group committed to ensuring that Seneca County's air, soil, water and environment are clean and healthful, and Waterloo Container Company ("WCC"), a family-owned business started in 1980 to support the burgeoning wine industry in the Finger Lakes of New York and East Coast which has since grown into a preeminent packaging supplier for Eastern North America.

CCSC and WCC strongly object to the mere renewal of the Part 360 solid waste management facility permit issued to Seneca Meadows, Inc. ("SMI") #8-4532-00023/00001 (the "Application") and respectfully demand that the Department rescind the Negative Declaration and treat the Application as an application for a new permit because of changed environmental conditions, i.e., the persistent, pervasive and pernicious odor in and around SMI's facility in the Town of Seneca Falls (the "Dump").

The New York State Department of Environmental Conservation (the "Department") is well aware of its own regulation at 6 NYCRR Section 211.1 entitled "Prohibition of pollution" which provides in pertinent part:

No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which **unreasonably interfere with the comfortable enjoyment of life or property**. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate,

fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others (emphasis added).

The Department is likewise in possession of over 2,000 written odor complaint reports received from SMI on a regularly monthly basis, as we determined from Freedom of Information Law requests to the Department's Region 8 office. Upon information and belief, the Department continues to receive written odor complaint reports from SMI on a monthly basis. Notwithstanding that the odor complaints were called into SMI's so called "Hotline" and were investigated by SMI, an astounding number of odor complaints associated with emissions from the Dump in 2015, 2016 and 2017 *were actually confirmed by SMI itself*. The garbage and landfill gas odors from the Dump are often described by persons reporting to the SMI "Hotline" as "sickening", "disgusting", and "revolting". Written odor complaint reports in the Department's possession document that reports to SMI's "Hotline" are received from schools, churches, workplaces such as the Seneca County Office Building, Bona-Dent¹ and WCC, hotels, residences, and passers-by. Some of the written odor complaint reports are from persons who reside or work *several miles* from the Dump, and odors from the Dump respect no boundaries and often affect multiple municipalities. The Department received testimony at the August 10 public hearing to the effect that people in Seneca Falls, Waterloo, Tyre, and beyond, are able to determine which way the wind is coming from depending on which municipality is experiencing odors from the Dump. SMI *has conceded* that the Dump causes odors (see SMI's guest editorial at http://www.fltimes.com/opinion/guest-appearance-about-that-smell-smi-recognizes-the-issue-and/article_62ffd386-d2c0-11e5-b64f-bbee427acbcc.html). Most disconcerting is how the people of Seneca Falls, Waterloo, Tyre and beyond frequently have to adjust their lifestyles because of odors from the Dump, from sleeping with their windows closed at night, to relocating out of the area. However, even when SMI confirms an odor associated with its Dump, the odor complaint reports typically conclude "Odor control equipment checked and adjusted", which addresses the problem no more effectively than the Wizard of Oz twisting knobs behind the curtain. These thousands of written odor complaint reports which reside in the Department's file speak for themselves, and establish beyond any reasonable doubt that the Dump emits odors in such quantity, characteristic and duration as to unreasonably interfere with the comfortable enjoyment of life and property of the good people of Seneca Falls, Waterloo, Tyre and beyond. But the Department is preparing to simply renew SMI's Part 360 permit.

Six NYCRR Section 621.11(h) provides in pertinent part:

The department may determine that any application for renewal or modification will be treated as a new application for a permit if: . . .

(2) there is newly discovered material information or there has been a material change in environmental conditions . . . (emphasis added).

The thousands of written odor complaint reports in the Department's file resulting from SMI's operation of the Dump in 2015, 2016 and 2017 further establish that environmental conditions in an around the Dump have materially changed since the Department last acted on SMI's Part 360

¹ Upon information and belief, and as testified by Danielle Bonafiglia-Wirth at the August 10 public hearing, SMI installed carbon filters at Bona-Dent's offices in an attempt to abate or mitigate the impact of odors from the Dump on Bona-Dent's workplace.

Permit, and the Department should therefore treat the Application as an application for a new permit as per 6 NYCRR Section 621.11(h).

The situation in Seneca Falls and Waterloo is unconscionable and untenable, but the Department lets it continue such that the people that live, go to school, work or even pass anywhere near Seneca Meadows' dump have to pay for it with the loss of comfortable enjoyment of their properties, and their quality of life. The Department has allowed SMI's Dump to become "too big to fail", and there are records in the Department's file which indicate the Department's on-site monitor at the Dump has been subject to "capture", believes that people who complain to SMI concerning odors have "an axe to grind", and is generally ineffective.

The Department has enforced 6 NYCRR Section 211.1 in situations much less egregious than SMI's:

- The Department pursued an enforcement action against Enterprise Terminals and Storage, LLC for violation of 6 NYCRR Section 211.1 and collected a \$5,000.00 civil penalty resulting from a propane pipeline facility that caused the release of mercaptan for *only two days* in 2014 which the Department alleged "unreasonably interfered with the comfortable enjoyment of life" (see *Matter of Enterprise Terminals and Storage, LLC* http://www.dec.ny.gov/docs/regions_pdf/entrprsetrmnlstrgordr.pdf).
- The Department also commenced an enforcement action against Norlite Corporation for a one-day release of methyl methacrylate in violation of 6 NYCRR Section 211.1 that resulted in an Order on Consent involving additional violations where Norlite Corporation agreed to pay a civil penalty of \$29,500.00 (see *Matter of Norlite Corporation* http://www.dec.ny.gov/docs/regions_pdf/norliteorder.pdf).
- The Department pursued enforcement of the former Section 211.2 (211.1 was formerly codified as 211.2) for a single dust cloud on *one day* that travelled beyond a mine boundary and unreasonably interfered with neighbors' comfortable enjoyment (see *Matter of Cobleskill Stone Products, Inc.* <http://www.dec.ny.gov/hearings/88974.html>).
- The Department pursued an enforcement action for violation of former Section 211.2 and collected a \$5,000.00 civil penalty where "Department staff detected the odors from the waste piles at residences located *within a 50 feet radius* of the location of the spill material" (emphasis added)(see *Matter of Pan Am Railways, Inc.* http://www.dec.ny.gov/docs/regions_pdf/panamord.pdf).
- The Department commenced an enforcement action and actually convened an administrative hearing over alleged violations of former Section 211.2 where a *pizzeria* was held in violation based in part on neighbors' complaints (see *Matter of Original Italian Pizza, LLC* <http://www.dec.ny.gov/hearings/77747.html>).

However, because of New York State's (and particularly New York City's) unreasonable reliance on landfilling in Seneca County as an ongoing solid waste management strategy, *the Department turns a blind eye and permits SMI to violate 6 NYCRR Sections 211.1 and 360-1.14(m)*

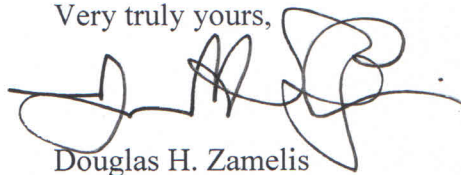
on an almost daily basis², and the Department's Part 360 Permit has become an unconditional license for SMI to pollute.

If, under these outrageous facts and circumstances, the Department were to merely renew SMI's permit to allow operation of the Dump for another 10 years, the Department would be the "proverbial ostrich" with its head stuck in the sand putting "out of sight and mind a clear environmental problem" in "Alice-in Wonderland manner"³. Any such determination by the Department to renew SMI's Part 360 permit would be contrary to substantial evidence in the record, irrational, arbitrary and capricious.

CCSC and WCC respectfully demand that the Department a) withdraw the Negative Declaration issued for the Application pursuant to the State Environmental Quality Review Act ("SEQRA"); b) not renew SMI's Part 360 permit; and b) treat SMI's Application as an application for a new permit with an adjudicatory hearing and full review pursuant to SEQRA.

Thank you in advance for the Department's prompt attention to this extremely important crisis.

Very truly yours,

A handwritten signature in black ink, appearing to read "Douglas H. Zamelis", with a stylized, cursive script.

Douglas H. Zamelis

cc:

Hon. Andrew S. Cuomo, Governor of the State of New York
Hon. Pamela Helming, NYS Senate
Hon. Brian M. Kolb, NYS Assembly
Hon. Thomas F. O'Mara, NYS Senate Environmental Conservation Committee Chair
Hon. Steve Englebright, NYS Assembly Environmental Conservation Committee Chair
Hon. Eric T. Schneiderman, New York Attorney General
Hon. Basil M. Seggos, Commissioner, NYSDEC
Hon. Paul D'Amato, Region 8 Regional Director, NYSDEC
Hon. Charles H. Schumer, U.S. Senate
Hon. Kirsten E. Gillibrand, U.S. Senate
Hon. Tom Reed, U.S. House of Representatives
Concerned Citizens of Seneca County, Inc.
Waterloo Container Company

² On an annual basis as part of its Title V permit issued by the Department under authority of the federal Clean Air Act, SMI certifies that it is in compliance with 6 NYCRR Section 211.1, and on an annual basis *the Department accepts* SMI's certification despite the Department's knowledge and possession of the thousands of written odor complaints over a prolonged period.

³ *H.O.M.E.S. v. New York State Urban Dev. Corp.*, 69 A.D.2d 222 (4th Dept. 1979).